W.15 Settled Land Act Settlements

This web-entry provides more detail about the older form of trust relating to land, the strict settlements, which is covered only in outline in the text.

15.1 Types of settlement

At 15.3.1 in the text, there is a brief explanation of the sort of circumstances which often gave rise to a SLA settlement before 1997, but here the statutory definition of such a settlement and the technical terms which describe those circumstances are covered in detail.

The definition of a settlement is provided by SLA 1925, s. 1, which provides that 'Any deed, will, agreement …. or other instrument' under which land 'stands limited' in certain specified ways will give rise to a settlement.

The ways specified are now each covered in turn.

15.1.1 SLA 1925, s. 1(1)(i): limited in trust for any persons by way of succession (i.e., provides for successive beneficial interests)

This is the simplest, the classical, form of settlement and it arises whenever property is granted 'To A for life and then to B'. This paragraph of s. 1(1)

> of the Act is very widely drawn and in fact the wording is wide enough to include several of the other specific arrangements set out in the later paragraphs.

15.1.2 SLA 1925, s.1(1)(ii): limited in trust for any person in possession

This provision lists a number of limitations which would create interests entitling the holder to possession of land but which, after 1925, took effect only in equity and could not create legal estates.

(a) For an entailed interest whether or not capable of being barred or defeated

As is explained in the text (see 1.5.1.3) an entail (or fee tail) arose in a case in which land was granted to 'A and the heirs of his body'. This phrase meant that only a particular class of heirs could inherit A's interest. Accordingly it could not be a fee simple estate and it did not come within s. 1, LPA 1925. Under such a provision A's interest passed only to his (it was usually his but not always) lineal descendants. In fact, the provision was often made in the form 'heirs of the body male' in order to exclude inheritance by lineal, female heirs as well. Thus, if A died childless, the land did not pass to those more remote members of his family (e.g., his brother or his father) who would be entitled to take if he had held a fee simple. In such a case the entail ceased and the property reverted to the settlor, or to his successors, who accordingly were said to have a 'reversion' in the property.

A property owner making a settlement would grant a fee tail to his eldest son as a means of ensuring that the son would not hold the full fee simple in the future and so would never be able to dispose of the family

property. There was, however, one danger which threatened to interfere with the settlor's plans, for from the Middle Ages the common law permitted a tenant in tail to 'bar' the fee tail and convert his limited estate into the full fee simple. Current provisions for barring an entail are to be found in the Fines and Recoveries Act 1833 (but you are unlikely to be required to know about them).

The danger that a son might frustrate his father's intentions by barring the entail was traditionally overcome by the settlor persuading his son to bar the entail as soon as he came of age and to settle the resulting fee simple, giving himself a life estate and creating an entail in favour of his own eldest son. This seems to have worked satisfactorily in most cases, and a process of barring the entail and resettling would go on for one generation after another, so that the current owner of the property never had more than a life estate. However, you can see from Jane Austen's *Pride and Prejudice,* or the television series *Downton Abbey,* the sort of trouble that could arise if there was no son to bar the entail. In both of these stories the owner's daughters will be left unprovided for and a male cousin will inherit the entailed estate.

Entails still exist under old settlements, but the new creation of such interests had become relatively rare, even before TOLATA 1996 provided that such an interest could no longer be created. Under the Act, any attempt to create a fresh entailed interest will operate instead as a declaration that the property is held in trust absolutely for the person who otherwise would have had the entailed interest (Sch. 1 para.5).

(b) For [a].... fee simple or ... term of years .... subject to an executory limitation, gift, or disposition over
This type of settlement is best explained by an example. It would arise if a grant were made:

> to A in fee simple but to B when B is admitted as a solicitor.

In this situation A may lose his interest in the property if B ever manages to qualify as a solicitor; only if B predeceases A, without so qualifying, will A get an unconditional right to the land. Accordingly one is again faced with the possibility of a succession of interests and this created a settlement.

(c) For a base or determinable fee or any corresponding interest in leasehold land
The nature of the determinable fee is explained in the text – see 9.3.2.

The base fee is now extremely rare and a modern lawyer is most unlikely ever to encounter one. It is an interest which would arise if someone with an entailed interest sold that interest. He could not give the purchaser a greater interest than he himself had, and so the purchaser would acquire an interest which could be inherited by any of his own heirs, but which would last only as long as the heirs of the body of the original entailed owner exist. These base fees are rare because entails themselves are now relatively uncommon and also because it is usually possible for the holder of an entailed interest to bar the entail completely and to convey a full fee simple to a purchaser under the provisions of the Fines and Recoveries Act 1833. In these circumstances, it would be rare for a purchaser ever to settle for a base fee. As explained above, TOLATA 1996 has rendered base fees even more rare because no new entails can be created.

(d) Being an infant [now known as a 'minor'], for an estate in fee simple or for a term of years absolute
Any person under the age of 18 years (originally 21 years) is legally a 'minor' and is incapable of owning a legal estate (LPA 1925, s. 1 (6)). Obviously, a minor might well be entitled to such an estate (e.g., under a will) and accordingly the land will be held by trustees upon trust for the minor, who will have an equitable interest in the property. Such trusts can be brought to an end when the minor reaches 18 and is capable of holding the legal estate for himself.

Until 1997 the trust for a minor would take effect as a SLA settlement with the legal estate being held by the statutory owners (see text at 18.3.1), but now it will operate as a declaration that the land is held on a trust of land upon trust for the minor (and if there are adult beneficiaries, for them) by virtue of TOLATA 1996, Sch. 1, para. 1 (see further at 17.10.1 in the text).

15.1.3 SLA 1925, s. 1(1)(iii): limited in trust for any person for an estate in fee simple or for a term of years absolute contingently on the happening of any event

Such conditional interests arise when an ascertained person will obtain a legal estate at some point in the future if a specified event occurs. For example, parents, fearing youthful indiscretions, might provide that a young person is not to take property until he or she reaches an age greater than the age of majority, e.g., 21 or 25 years. Until that age, the beneficiary has only a contingent interest and this must be held behind a trust. If and when the beneficiary reaches the prescribed age he or she will obtain a fully vested legal estate in the property. These contingent interests are often described as 'springing interests', because they will 'spring up' in the future, rather than following some earlier interest. After 1996 any new arrangements of this type will take effect as trusts of land under TOLATA 1996.

15.1.4 SLA 1925, s. 1(1)(iv)

This paragraph was repealed in 1949.

15.1.5 SLA 1925, s. 1(1)(v): charged ... with the payment of any rentcharge for the life of any person, or any less period, or of any capital, annual, or periodical sums for the portions, advancement, maintenance, or otherwise for the benefit of any persons...

As explained in the text (see 17.10.2), a family settlement would typically provide for the payment of sums of money for the maintenance of younger children or other relations. The payments would be made from the income of the estate, which would generally go to the tenant for life, and the obligation to make these payments would be charged on the land.

Under the SLA 1925 all land subject to such family charges became settled land. However, after the Act was passed, it was realised that a number of purchasers had in the past bought land subject to such rentcharges, on the vendors' undertaking to indemnify them against the charges. These owners now found themselves subject to SLA 1925 provisions, requiring complicated documents and the appointment of trustees. This method was in common use in some parts of the country (notably Bristol) and this result proved inconvenient for those affected.

The Law of Property (Amendment) Act 1926, s. 1, therefore provided that such land could still be dealt with as if it were not settled land, and thus its owner has a choice. The owner may sell the land without going through the SLA 1925 formalities, provided the land is sold *subject to* the charges (probably with a provision for the vendor to indemnify the purchaser). However, if the purchaser wishes to buy the land *free of* the charges, the SLA 1925 overreaching machinery must be adopted: a vesting deed will be required and trustees must be appointed to receive the purchase money. The purchaser will then take the land free of the charges, which will attach instead to the purchase money.

The reduction of the number of rentcharges by the Rentcharges Act 1977 makes these situations more unusual and after 1996, of course, new arrangements of this kind will operate as trusts of land.

15.2 Creating a settlement

Of course, no new SLA settlements can be created now, but it can still be important to understand what formalities were required, so as to be able to check whether any existing SLA settlement has been properly created (as would be necessary, for example, in investigating title for a prospective purchaser of settled land).

SLA 1925, s.4 requires that an inter vivos settlement should be effected by two documents – a trust instrument and a vesting deed. The following paragraphs cover the contents of those documents and the consequences of failing to use them.

15.2.1 Trust instrument

The trust instrument is the document which sets out in detail the intentions of the settlor. Under SLA 1925, s. 4(3), it should contain the following information:

(a) a declaration of the trusts affecting the land;
(b) the appointment of trustees;
(c) a statement of who is to have the power to appoint new trustees (if any); and
(d) any extra powers to be given to the tenant for life or trustees, in addition to those conferred by the Act.

It can be seen from this that the trust instrument could have been a very long document, particularly if the settlor chose to extend the statutory powers, and that it included all the personal details of the trust, including the names (or descriptions) of all the beneficiaries and the nature of their interests in the property. Some of this information might well be of a private nature and be such that the beneficiaries would not wish it to be revealed to an outsider, such as an intending purchaser of the settled land.

15.2.2 Vesting deed

It is the second document, the vesting deed, which provides all the necessary public information about the trust. The contents of the vesting deed are set out in SLA 1925, s. 5(1):

(a) a description of the settled land (e.g., its address; or, if necessary, a description by reference to a plan; or, in registered land, the title number);
(b) a declaration that the land is vested in the person to whom it is conveyed, or in whom it is declared to be vested, upon the trusts affecting the land;
(c) the names of the trustees;
(d) any powers, additional to the statutory powers, conferred by the settlement; and
(e) the name of any person who is entitled to appoint new trustees.

The details contained in this document provide all the information that a purchaser of the settled land needs to know. It is not necessary for him to know anything of the details of the beneficial interests in the settlement and so this information does not appear in the vesting deed.

The vesting deed should have been executed by the settlor at the same time as the trust instrument. If this was not done the trust was only partially constituted and the tenant for life or statutory owner had a right, under SLA 1925, s. 9(2), to demand that the trustees of the settlement execute the necessary vesting deed. Should they refuse to do so, the court might make an order which operates as a vesting deed (s. 9(2)).

15.2.2.1 Vesting the legal estate in the tenant for life

(a) *Unregistered land*

Section 4(2) requires that settled land should be legally vested in the tenant for life or statutory owner, and it was the vesting deed which performed this function when settlements of unregistered land were created. The wording of s. 5(1)(b) on this point may seem a little confusing and, in order to understand it, one has to realise that it is designed to cover two possible situations.

In the first situation, the settlor gave himself an interest under the settlement, for instance keeping a life interest for himself and providing that other interests should take effect on his death. In such a case, he is the first tenant for life and so should hold the legal estate. In fact, that estate was already vested in him, for he owned the legal estate absolutely before making the settlement. The vesting deed therefore merely *declared* that he held the legal estate, for it was not necessary to convey it to him.

In the other possible situation, the settlor divested himself of all interest in the property and the first tenant for life was therefore someone other than the settlor. In this case, the legal estate was actually **conveyed** to the tenant for life by the vesting deed.

(b) *Registered land*

Where title to the land was registered, the procedure for creating a settlement followed the same pattern, except that a prescribed form of vesting transfer had to be used in place of the vesting deed (Land Registration Rules 1925, r. 99) and, that in cases where the legal estate had to be transferred to the first tenant for life, it did not vest in him until the transaction was completed by registration.

The tenant for life was registered as the sole proprietor, and the interests of the beneficiaries should be protected by the entry of a restriction, which in general terms would provide that no future dealing with the land was to be registered unless any capital money arising from the transaction was paid to two named persons (the trustees of the settlement). This served the purpose of alerting intending purchasers to the fact that this was settled land, and also ensuring compliance with the overreaching procedure. If for any reason the registrar was unaware of the need to enter the restriction, a beneficiary might protect his or her interest by means of a caution. This might, for example, be necessary where the tenant for life, being also the settlor, was registered as proprietor before he made the settlement and then did not apply for entry of the restriction. (Note that LRA 2002, Sch.12 para. 2 maintains the effect of restrictions and cautions entered on the register before the Act came into force.)

15.2.3 Settlements created by will

Where a settlement was created by will, SLA 1925, s. 6, provides that the will itself should fulfil the functions of the trust instrument. The estate would pass to the settlor's personal representatives on a grant of probate and they would execute a 'vesting assent' in favour of the tenant for life or statutory owners. In the case of registered land, the transfer should have been completed by registration, as explained above.

15.2.4 Failure to comply with the formal requirements: the paralysing section

In order to ensure that the structure required by SLA 1925 was adopted, s. 13 contains a provision which paralyses certain transactions until the trust is fully constituted. The section provides that once a tenant for life or statutory owner has become entitled to the execution of a vesting deed in his favour and until such a deed is executed, any purported disposition of the settled land by the tenant for life or statutory owner is void. Thus, any attempt by the tenant for life to convey the land to a purchaser would be ineffective to pass the legal estate. Such a transaction, however, operates as a contract to transfer the estate once the necessary vesting instrument has been made.

Since this provision might unfairly disadvantage an innocent purchaser, s. 13 provides that the paralysing provision shall not operate where the purchaser of the legal estate acquires it:

> without notice of such tenant for life or statutory owner having become ... entitled …[to the execution of a vesting deed].

The provisions of s. 13 were most likely to be relevant in those settlements where the tenant for life was also the settlor, for, in other cases, the tenant for life would normally be unable to prove his title to the land until the legal estate has been vested in him by the vesting deed.

Finally, it should be noted that it is unnecessary to execute a vesting deed in the rare situation in which the settlement comes to an end before the deed has been made (*Re Alefounder's Will Trusts* [1927] 1 Ch 360) and in such a case the owner can dispose of the land without being affected by s. 13.

15.3 Powers of a tenant for life

This section explains the powers of the tenant for life under a strict settlement.

15.3.1 Power to sell

The most important of the rights of the tenant for life is the right to sell the settled land or to sell any easement or other right over the land. This right arises under SLA 1925, s. 38, which also allows the settled land to be exchanged for other land or rights (though exchanging is rare).

The tenant for life is under no obligation to sell the property (and this used to be the major difference between the SLA settlement and the trust for sale, where the trustees were under a duty to sell); the section merely gives him the right should he choose to exercise it.

Any sale made under s. 38 must be made in accordance with s. 39: most importantly the sale must be 'made for the best consideration in money that can reasonably be obtained'. The sale may be by auction or by private contract, as the tenant for life wishes.

The conveyance will be executed by the tenant for life, since the legal estate in the land is vested in him or her. However, in order to prevent the tenant for life selling the land and then making off with the proceeds of sale (a fraud on the other beneficiaries) the proceeds of sale ('capital money') must be paid to two trustees or into court under s. 18(1)(b) in order to trigger the overreaching provisions.

15.3.2 Power to lease

The power of the tenant for life to grant leases arises under SLA 1925, s. 41. Leases granted by the tenant for life may continue after his or her interest in the property comes to an end, binding those next entitled under the settlement, and so the period for which a tenant for life may grant leases is limited. Normally, they may be granted for any period not exceeding 50 years, with special provisions for mining leases (100 years) and building or forestry leases (999 years). By contrast, trustees of a trust of land have the powers of an absolute owner (unless restricted by the settlor) and are not restricted in the type or length of lease which they may grant.

Any lease granted under SLA 1925, s. 41, must comply with the requirements of s. 42, as to the way in which it is made, the date on which it takes effect and the rent to be charged.

The tenant must covenant to pay rent, and there must be a provision for forfeiture if he or she fails to do so.

15.3.3 Power to grant options

The tenant for life has power to grant options to purchase, to take a lease or to take any other interest in the settled land under SLA 1925, s. 51. Such options must be exercisable within an agreed period not exceeding 10 years (s. 51(2)).

15.3.4 Power to mortgage

SLA 1925, s. 71, gives a tenant for life the power to mortgage the settled land but only in order to raise money for specified purposes. These purposes are set out in s. 71(2) and include the right to mortgage in order to pay for those improvements which are authorised by the Act.

Authorised improvements are listed in Sch. 3 to the Act and fall into three categories, divided according to who is to meet the costs. In all cases, the settled land may be mortgaged to provide the money needed for the work but the tenant for life must repay the cost of improvements listed in Part III of the Schedule (for example, the installation of central heating) and may be required to pay for those in Part II (such as structural alterations of buildings). Part I, however, contains long-term improvements (including drainage, irrigation and the provision of labourers' cottages) which benefit the remainderman as much as the present tenant for life. Such improvements should be paid for out of capital, and the trustees cannot require the tenant for life to meet such costs. It should be noted that these provisions relate to improvements and not to *repairs*. Normally, with some exceptions relating to agricultural land, repairs to the settled land must be paid for by the tenant for life at his own expense.

The powers to mortgage are, accordingly, very limited and would normally have been expressly extended by the settlor. Contrast with these statutory powers the very wide powers of trustees under a trust of land.

15.3.5 Other statutory powers

As well as the major statutory powers mentioned above, SLA 1925, ss. 52 to 70 include a number of other rights which are not used so commonly.

In addition s. 64 confers a general power for the tenant for life to effect any transaction under an order of the court. In *Hambro* v *Duke of Marlborough* [1994] Ch 158 it was held that under s. 64 it was possible to authorise a dealing which would alter the beneficial interest of an adult beneficiary. The aim of the Duke (the current tenant for life) was to prevent his son, the Marquess of Blandford, from living in or managing Blenheim Palace and the surrounding estates, which had been settled on the Dukes of Marlborough since 1706. The use of s. 64 for this purpose was approved, provided that the effect was for the benefit of the settled land or all the beneficiaries under the settlement. In the particular circumstances of the case, the proposal was accepted as being in the interests of the trust.

15.3.6 Extra powers conferred by the settlor

The settlor was free to widen the statutory powers and to grant additional powers beyond those conferred by SLA 1925, and this was commonly done in professionally drafted settlements.

15.4 Attempts to fetter or restrict the powers of the tenant for life

Whilst it was open to the settlor to extend the power of the tenant for life, the settlor had no right to cut down the statutory powers. SLA 1925, s. 106, says that any provision which forbids the exercise of a statutory power or which attempts or tends to prevent the exercise of any such power is void. This section is very wide and renders void any provision in the trust which discourages the use by the tenant for life of his powers. Thus, in *Re Ames* [1893] 2 Ch 479, a provision that the tenant for life lost the right to a monetary benefit should the land be sold was held to be void since it discouraged sale.

A common restriction, which gave rise to much judicial consideration, was a provision that the tenant for life should lose his interest in the property should he cease to reside in it, or alternatively, that the interest was given to him while he lived there. This restriction, if fully operative, would discourage the exercise of the powers to sell or let the property, because on selling or letting the tenant for life would be required to leave the property and would thereupon forfeit his interest. As a result of SLA 1925, s. 106, the courts have held that should the tenant for life in such a case leave the property in furtherance of the exercise of his statutory powers he will *not* lose his interest in the estate (*Re Acklom* [1929] 1 Ch 195), for such a forfeiture is void under the section. Should, however, the tenant for life leave the premises for some other reason (e.g., his own convenience) then the forfeiture clause is valid (see *Re Haynes* (1887) 37 ChD 306 and *Re Trenchard* [1902] 1 Ch 378). Accordingly it should be regarded as a question of fact in each case whether the provision to which objection is taken does in fact amount to a fetter under s. 106.

By contrast with the provisions of SLA 1925, s.106, the wide power given to trustees of a trust of land can be restricted or excluded by the settlor (TOLATA 1996, s. 8(1)).

15.4.1 Attempts by tenant for life to transfer or limit his statutory powers

SLA 1925, s. 104(1), provides that the powers given to the tenant for life are not assignable. Thus, even though the tenant for life is free to sell his or her equitable life interest to another person, the tenant for life is not able to vest the statutory powers in that purchaser. In addition any contract by which a tenant for life agrees not to exercise any of his or her statutory powers is completely void (s. 104(2)).

15.5 Giving notice and obtaining consent

15.5.1 Giving notice

In a number of cases the tenant for life is not entitled to exercise his powers unless he or she gives notice of his or her intentions to the trustees.

SLA 1925, s. 101, requires the tenant for life to give notice to the trustees when he or she intends:

> to make a sale, exchange, lease, mortgage, or charge or to grant an option.

Whilst notice is generally required for the grant of a lease, one for not more than 21 years which otherwise complies with the Act may be granted without notice being given (s. 42(5)).

The requirement that the tenant for life must give notice to the trustees of these proposed transactions does not mean that he or she must obtain their consent, and normally the trustees have no right to prevent the exercise of his statutory powers. The purpose of these provisions is to keep the trustees informed about the property and also to warn them of occasions on which they will be required to receive capital money. A person dealing in good faith with the tenant for life is not, however, required to ensure that proper notice has been given (s. 101(5)).

15.5.2 Obtaining consent

In general it was not possible for a settlor to provide that the tenant for life might exercise a statutory power only with the consent of some other person (e.g., the trustees or another beneficiary), since such a provision would amount to an attempt to restrict or fetter the tenant for life's powers (see above). (Contrast this position with that which used to apply to the trust for sale and which now applies to trusts of land.) There are, however, certain limited exceptions to this rule, which are considered below.

(a) The settlor might provide that the tenant for life must not make any disposition in relation to the principal mansion house on the settled land without the consent of trustees (or an order of the court dispensing with such consent) (SLA 1925, s. 65). This rule would apply relatively infrequently, for a 'principal mansion house' is a house, where the grounds and lands normally enjoyed with the house exceed 25 acres and which is not a farmhouse (s. 65(2)).

(b) SLA 1925, s. 66(1), provides that in certain restricted cases, the consent of the trustees or a court order is required to cut and sell timber (for this is an act which decreases the capital value of the property).

(c) The compromise of claims and settling of disputes by the tenant for life is subject to the consent of the trustees (SLA 1925, s. 58(1)), as is the power to release, waive or modify rights (s. 58(2)).

The very nature of these restrictions indicates that the SLA machinery was really only designed to operate for substantial trusts involving large estates.

15.6 Duty of the tenant for life to act as a trustee

A tenant for life is in a rather unusual position because, although he or she has the legal estate of the settled land vested in him or her, the tenant for life only has a partial beneficial interest in the property. Accordingly the tenant for life holds the legal estate as trustee upon trust for him or herself and for the other beneficiaries. In addition, by virtue of SLA 1925, s. 107, the tenant for life is a trustee of all the powers granted by the Act, and when exercising them must:

> have regard to the interests of all parties entitled under the settlement.

The result is that, to some extent, the other beneficiaries are protected against an abuse of power by the tenant for life.

It appears, however, that the court will not force a tenant for life to exercise any of his powers, such as to improve the settled property or to sell it (*Re 90 Thornhill Road* [1970] Ch 261), for these are powers, rather than duties. It is also clear that the court will not intervene if the proposed transaction is for a fair price and is otherwise proper, even though the tenant for life has decided to enter into the transaction for some malicious purpose. Thus, in *Wheelwright* v *Walker* (1883) 23 ChD 752, the court refused to intervene when a tenant for life proposed to sell settled land in order to prevent the remainderman, whom he disliked, from ever living in the property. Since the sale was at a fair price and complied with the Act, the court would not prevent it, even though the tenant for life's motivation for sale was malice towards the remainderman.

The court will, however, intervene where the tenant for life seeks to use his powers in a way which would be prejudicial towards other beneficiaries (*Hampden* v *Earl of Buckinghamshire* [1893] 2 Ch 531). An exercise of a

power in an attempt to evade the terms of the settlement will also be objectionable. In *Middlemas* v *Stevens* [1901] 1 Ch 574 the tenant for life was the widow of the settlor, and according to the terms of the settlement had an interest which would end on her death or remarriage. The tenant for life wished to remarry and, in order to ensure that she could continue to live on the settled land after her remarriage, granted a 21-year lease of the property to her future husband. The court held that the lease had been granted in bad faith and, since the grantee was aware of the circumstances, the lease was void. This does not mean, however, that any grant of a lease to a spouse of the tenant for life is necessarily bad; there must be something further in the circumstances to suggest *mala fides* (bad faith) (*Gilbey* v *Rush* [1906] 1 Ch 11).

15.7 Protection of the purchaser: overreaching; and s.110(1)

The SLA 1925 contains several provisions designed to protect the purchaser in transactions with the tenant for life. In general, the purchaser will learn that the property is subject to a SLA settlement when investigating the title: from the vesting deed in the case of unregistered land or from the restriction on the register in the case of registered title. However, if the tenant for life should succeed in concealing the settlement and pretend to be the absolute owner of the property (as for example happened in *Weston v Henshaw* [1950] Ch 510 – for which, see below), the purchaser may fail to make use of the overreaching procedure or may not realise that the transaction in question is outside the powers of a tenant for life and accordingly void under s.18(1).

Where the transaction is an unauthorised one, it might be thought that the purchaser would be protected by the provisions of s.110(1), which provides that on any disposition the purchaser (which includes tenants, mortgagees, etc –s.117) shall:

> be conclusively taken to have given the best price, consideration, or rent ... that could reasonably be obtained ... and to have complied with all the requisitions of [the Act, provided that the purchaser was] dealing in good faith with a tenant for life or statutory owner.

Of course, if the purchaser has discovered that the land is subject to a settlement, the purchaser cannot 'in good faith' rely on a transaction which is in breach of the Act. You might imagine, however, that the purchaser would be protected by s.110(1) if, through no fault, the purchaser was unaware that the property was subject to a settlement. This could happen if the transaction is one for which no proof of title is normally required (e.g., some leases, particularly periodic tenancies such as weekly or monthly tenancies—which in practice can endure for a long period and thus might affect the trust property for some time) or where the tenant for life has some means of establishing the title which conceals the existence of the trust. This can occur when the settlor is also the first tenant for life under the settlement and has retained the original conveyance to himself or herself as absolute owner of unregistered land. This will enable the tenant for life to conceal the settlement and appear to a purchaser to be an absolute owner. In such a case, the purchaser would, in good faith, be unaware of the settlement. A similar situation arose in *Weston v Henshaw* [1950] Ch 510, in which the court was required to consider the extent to which an innocent purchaser was protected by s.110(1).

15.7.1 *Weston v Henshaw*

In this case, a father had conveyed land to his son as absolute owner in 1921. In 1927 the son reconveyed the property to his father, and the father later settled the estate upon his son as tenant for life. The legal estate was conveyed to the son by a vesting deed but he also retained the 1921 deed of conveyance and later used this as evidence of his title when mortgaging the settled land to raise money for purposes not authorised by the Act. On the death of the son the truth was discovered and the remainderman claimed that the mortgage was void under SLA 1925, s. 18, and did not bind him as beneficiary under the trust. The mortgagee, however, claimed to be a bona fide purchaser and therefore protected by s. 110(1). One would imagine that this is a clear example of a case in which s. 110(1) should apply but the court held that it did not, because the mortgagee did not *know* that he was dealing with a tenant for life. The court therefore decided in favour of the remainderman and against the mortgagee.

This decision has been heavily criticised, for it seems to deprive the purchaser of any protection in the case of unauthorised transactions. You have already seen that he is not protected if he knows he is dealing with the

tenant for life, because he is taken to know too that the transaction is outside the SLA provisions; and *Weston* v *Henshaw* then excludes him in just those situations where he does appear to be acting in good faith.

Accordingly, in *Re Morgan's Lease* [1972] Ch 1 the court held that s. 110(1) applied even where a purchaser was not aware that he was dealing with a tenant for life. Both cases were heard at first instance only and thus are only of persuasive authority. Generally *Re Morgan's Lease* is regarded as being the better authority, particularly as the court there was able to base its decision on an earlier case (*Mogridge* v *Clapp* [1892] 3 Ch 382) which was not considered by the court in *Weston* v *Henshaw*.

Even if s. 110(1) applies where the purchaser acts in good faith not knowing that he is dealing with a tenant for life, there may still be difficulties. The section says that the purchaser is deemed to have complied with the 'requisitions' of the Act. Obviously this protects a purchaser who has failed to comply with, for example, the requirement that capital money be paid to the trustees. However, what of the 'purchaser' who has been granted a 99-year lease? Under the Act normally only 50-year leases can be granted. The requirement not to grant longer leases is a requirement placed on the tenant for life and not on the purchaser (as, too, is the requirement that mortgages should be made for authorised purposes only). It could be argued that unauthorised transactions lie outside the scope of s.110(1), not because of the state of the purchaser's knowledge but because the subsection is concerned with the purchaser's conduct and is not phrased in such a way as to protect the purchaser against bad faith on the part of the tenant for life. This might have been a better reason for the decision in *Weston* v *Henshaw* but it is not a point which has received much consideration. In any event, it seems that there is, thus far, no decision on the position of a lease granted for more than the prescribed period and now perhaps there never will be.

15.7.2 Registered land

Finally, it is worth noting that none of these problems about unauthorised dispositions should arise in the case of registered land. The restriction or caution should make it clear to any prospective purchaser that the estate is settled land and, indeed, the standard form of restriction directs that no disposition is to be registered unless authorised by SLA 1925.

If no restriction or caution is entered, the purchaser should be protected in his dealings with the registered proprietor and it is thought that SLA 1925, s. 18, and *Weston* v *Henshaw* could not prevail over the general statutory provisions relating to registered land.

15.8 Role of the trustees of the settlement

15.8.1 Duties where settlement defectively created

Where a settlement was created before 1997 but no vesting deed has been executed, the trustees should perfect the settlement by themselves executing a vesting deed.

15.8.2 Functions where there is no tenant for life, or where the tenant for life has ceased to have a substantial interest in the property

You have seen that where the person currently entitled under a SLA settlement is a minor, the trustees will be required, in the absence of any express provisions by the settlor, to exercise the tenant for life's powers as statutory owners.

The trustees also act as statutory owners in any other case where there is no tenant for life (SLA 1925, s. 23). This situation would arise, for example, in the sort of settlement envisaged by SLA 1925, s. 1(1)(iii), where an interest is to 'spring up' in the future, with no preceding earlier interest. Until the interest arises, there is no tenant for life, and the legal estate will be held and the powers exercised by the trustees as statutory owners.

The trustees may also be called upon to exercise the statutory powers if the tenant for life has ceased to have a substantial interest in the property (e.g., because he has sold his equitable interest or has become bankrupt) *and* has unreasonably refused to exercise his powers *or* has consented to the change (SLA 1925, s. 24). However, before the powers can be transferred to the trustees in this way, a court order must be obtained.

15.8.3 Functions in connection with dispositions of settled land

As we saw earlier, the trustees must be given notice before a tenant for life or statutory owner makes certain dispositions of settled land. In certain cases, moreover, the consent of the trustees may be required.

The major function of the trustees is, however, to receive any capital money which arises from the transaction, since under SLA 1925, s. 18(1)(b), the overreaching provisions can only operate where capital money is paid either to the trustees of the settlement or into court (see also s. 75). Accordingly no disposition which gives rise to capital money can be completed where the trust lacks trustees.

Should the tenant for life wish to acquire the estate for himself or herself, the trustees take on a special importance. The tenant for life is also a trustee and as such, under general equitable rules, would be unable to acquire the settled land or any interest in it for personal benefit (*Keech* v *Sandford* (1726) Sel Cas T King 61). Section 68 SLA 1925, however, makes such transactions possible by temporarily (and only for the purpose of the particular disposition) transferring the powers of the tenant for life to the trustees. This avoids the tenant for life being placed in a position in which his or her interests as purchaser and trustee conflict.

15.8.4 Powers of investment

Since one of the main functions of trustees is to receive capital money, they are given statutory powers in relation to the investment of that money (SLA 1925, s. 75(1)). Some capital money, for example, a mortgage advance will, of course, simply be applied for the purpose for which it was raised, but in general capital money must be invested and the income obtained paid to the tenant for life.

The statutory powers of investment are set out in SLA 1925, s. 73. Section 73(1)(i), as amended by the Trustee Act 2000 (TA 2000), Sch. 2, para. 9 gives the trustees power to invest in securities either under the general power of investment in TA 2000, s. 3 or under powers conferred on them by the settlement. Under s. 73(1)(xi) the trustees may purchase land in England and Wales, but this territorial restriction remains in force for settlements under SLA (see TA 2000, s. 10(1)(a)), despite the relaxation which permits capital money arising under a *trust of land* to be invested in land anywhere in the United Kingdom.

Under s. 75(2) the tenant for life had the right to choose the investments to be made, and to direct the trustees accordingly, although if he did not do so the trustees were to exercise their own discretion. However, TA 2000, Sch. 4, para. 10(1) amends this subsection so as to provide that investments shall be made according to the discretion of the trustees, but subject to any consent required or direction given by the settlement. Section 75(4) as amended now provides that:

> The trustees, in exercising their power to invest or apply capital money, shall—
> (a) so far as practicable, consult the tenant for life; and
> (b) so far as consistent with the general interest of the settlement, give effect to his wishes.

15.8.5 Duties when the interest of the tenant for life comes to an end

Depending on the terms of the settlement, the interest of a tenant for life may come to an end during his or her lifetime, or at his or her death. For example, an interest given to a widow 'until remarriage' will end during her lifetime if she remarries (see *Middlemas* v *Stevens* [1901] 1 Ch 574, at 6. above); but if she does not remarry, or if the interest given to her is simply for life, with no restriction, the interest will end at her death.

15.8.5.1 Where the interest ends during the tenant's life

In this case, it is the responsibility of the tenant to convey the legal estate to the person next entitled under the settlement, and the trustees are not concerned with the matter. If the land continues to be settled, so that the person next entitled takes only a limited interest, the transfer should be made by vesting deed (SLA 1925, ss. 7(4) and 8(4)), which will contain all the information needed by a prospective purchaser. This would be appropriate where, for instance, the widow's interest is followed under the settlement by an entailed interest.

Where, however, the settlement comes to an end, and the person receiving the estate is absolutely entitled, the estate should be passed to him by an ordinary conveyance and not one containing all the details prescribed for a vesting deed (SLA 1925, s. 7(5)).

If, in either case, the tenant for life fails to execute the required deed, the court may make a vesting order (SLA 1925, s. 12).

15.8.5.2 Where the tenant for life's interest comes to an end with his death

In this situation, the trustees may have a role to play. If the land remains settled (as above), the estate does not vest in the deceased's ordinary personal representatives, but instead vests in the trustees as special personal representatives (Administration of Estates Act 1925, s. 22(1), in the case of a will; Supreme Court Act 1981, s. 116, in the case of intestacy). The trustees are then required to convey the estate to the next tenant for life by a vesting deed or vesting assent, which again will contain all the information a purchaser would need to know.

If, however, the settlement has come to an end, the estate vests in the deceased tenant for life's ordinary personal representatives, and they will transfer it to the person who is absolutely entitled by an ordinary conveyance or assent (*Re Bridgett & Hayes's Contract* [1928] Ch 163).

15.8.6 Functions when the settlement ends

Normally, the trustees' functions end when the settlement ends but, in certain cases in which it would not be clear to an intending purchaser that the trust has ended, the final function of the trustees will be to execute a deed of discharge which declares that the trust has come to an end (SLA 1925, s. 17).

A practical example may help to explain this. A settlor settles land 'upon A for life and then to B absolutely'. The land is vested in A as tenant for life. Thereafter A buys B's equitable interest in the property. A thus becomes solely entitled to the property but must ask the trustees to execute a deed of discharge so that he can prove to any intending purchaser that the trust has indeed ended.

The purpose of the deed of discharge is thus to cancel the effect of the earlier vesting deed, which told a prospective purchaser that the land was subject to a settlement. If no vesting deed has been executed before the settlement ends (as in *Re Alefounder's Will Trusts* [1927] 1 Ch 360), no deed of discharge is required to neutralise it, and similarly such a deed will not be needed if there are other documents in the title which show that the settlement has come to an end. Thus, the ordinary conveyance by a tenant for life or his ordinary personal representatives to the person absolutely entitled (see 8.5 above) is sufficient evidence that the settlement has come to an end, and there is no need for a deed of discharge.

15.8.7 General functions of trustees

As well as exercising their specific powers, trustees must also have regard to their general fiduciary relationship to the trust. Accordingly the trustees should keep a general 'watching brief' over the trust and ensure that all is proceeding properly. In *Re Boston's Will Trusts* [1956] Ch 395 at p. 405, Vaisey J said that the general duty of the trustees is to 'conserve the settled property'. Accordingly the trustees should intervene should it come to their attention that the tenant for life intends to act in excess of his powers. Also the trustees must be parties to any legal action brought in respect of the land.

15.9 End of a settlement

SLA 1925 s. 3 provides that a settlement lasts as long as:

(a) any limitation, charge, or power of charging under the settlement subsists or is capable of being exercised; or
(b) ... the person who would otherwise be owner of the legal estate is an infant.

Thus, if a grant is made 'to A for life and then to B absolutely', the settlement will end on A's death unless, at that date, B is under 18, in which case it will end on B's 18th birthday.
If the settlement is 'to C for life and then to D in tail male', the settlement will end when there are no more lineal male heirs of D. At that point the estate will revert to the settlor or his heirs.

Finally, under TOLATA 1996, s. 2(4), a SLA settlement will also come to an end when there remains no relevant property subject to the trust (as presumably would happen if the whole of the settled land was sold and the capital money invested in property other than land). If, subsequently, new land is acquired by the trustees, Sch. 1(6) provides that this does not revive the SLA settlement: the new land will be held instead on a trust of land under the provisions of TOLATA 1996.